

1 C4CUTERC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 IN RE TERRORIST ATTACKS ON  
4 SEPTEMBER 11, 2001

5 03 MD 1570 (GBD)

6 -----x  
7 New York, N.Y.  
8 April 12, 2012  
9 2:15 p.m.

10 Before:

11 HON. FRANK MAAS

12 Magistrate Judge

13 APPEARANCES

14 COZEN O'CONNOR  
15 Attorneys for Plaintiff Federal Insurance Co.  
BY: SEAN P. CARTER  
16 J. SCOTT TARBUTTON

17 SPEISER, KRAUSE, NOLAN & GRANITO  
18 Attorneys for Ashton Plaintiffs, et al.  
BY: CHRISTINA M. FRY

19 KREINDLER & KREINDLER (Via Telephone)  
20 Attorneys for Ashton Plaintiffs  
BY: JAMES P. KREINDLER

21 ANDREW MALONEY (Via Telephone)  
22 Attorney for Ashton Plaintiffs

23 ANDERSON KILL & OICK, P.C.  
24 Attorneys for O'Neill Plaintiffs and Plaintiffs' Executive  
Committee  
BY: JERRY S. GOLDMAN  
RENE HERTZOG

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1 APPEARANCES (Continued)

2 MOTLEY RICE

3 Attorneys for Burnett, Euro Broker Plaintiffs  
BY: ROBERT T. HAEFELE

4 TOM MELLON (Via Telephone)

5 Attorney for Havlish Plaintiffs

6 JAMES P. McCOREY (Via Telephone)

7 Attorney for Havlish Plaintiffs

8 CLIFFORD CHANCE US LLP (Via Telephone)

9 Attorneys for Dubai Islamic Bank

10 BY: RONI E. BERGOFFEN

11 GOETZ &amp; ECKLAND P.A. (Via Telephone)

12 Attorneys for WAMY

13 BY: FREDERICK J. GOETZ

14 BERNABEI &amp; WACHTEL (Via Telephone)

15 Attorney for Al Haramain USA

16 BY: ALAN KABAT

17 MARTIN McMAHON (Via Telephone)

18 Attorney for Islamic Relief Organization,

19 Muslim World League

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1 (Case called)

2 THE COURT: I have the joint letter raising topics.

3 The first one that the plaintiffs propose is to talk  
4 about the status of document productions. The defendants  
5 oppose that as premature because there are a couple of weeks  
6 left for document production, but I don't think that there is  
7 any harm in being brought up-to-date on whatever is happening  
8 or isn't happening.

9 MR. CARTER: Your Honor, I think that we will begin  
10 with the production on the plaintiffs' side and then allow the  
11 defendants to speak where they stand with regard to their  
12 respective productions.

13 The different plaintiffs groups have been  
14 independently producing documents within their evidence  
15 databases and that process has been ongoing for quite a while.  
16 I think we would probably say that, as to what we would call  
17 the primary level of evidence, we are all probably 90 percent  
18 done. There are secondary and tertiary levels of evidence that  
19 we are still in the process of moving through.

20 One of the complications has been that there is a fair  
21 amount of information in the possession of each of the  
22 plaintiffs that is in foreign languages and it is simply taking  
23 us time to get through them; it is not only Arabic, some of it  
24 is in Serbo-Croatian. So it is going a little slower than we  
25 would like, although we are getting through it.

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1                   THE COURT: When you mention primary, secondary and  
2 tertiary productions, is there something thematically that  
3 distinguishes them or is it just because of rolling requests?

4                   MR. CARTER: No, your Honor. I think, thematically,  
5 the way we would probably explain it is, if there is a request,  
6 for instance, for any information or evidence you may use as to  
7 a certain defendant, it is not merely an exercise of finding  
8 everything relating or naming that defendant but, also, parties  
9 to which we believe it has ties and connections.

10                  MR. McMAHON: Your Honor, I am having a problem  
11 hearing Sean.

12                  THE COURT: Move the microphone closer, and it may be  
13 even better if you sit so that you are closer to it.

14                  MR. CARTER: I don't object to being comfortable at  
15 all, your Honor.

16                  THE COURT: Is that better?

17                  MR. McMAHON: Yes. That sounds a lot better, your  
18 Honor. Thank you.

19                  MR. CARTER: So we are going through that process,  
20 your Honor. I think, although we will be substantially  
21 complete our productions by April 30th, we may need a bit of a  
22 window after that to wrap up the process.

23                  An additional factor that we would like to have the  
24 Court to consider is, when we approached this discovery  
25 schedule and created the window following the productions for

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1 the parties to do follow-up and motion practice, I don't think  
2 we fully appreciated that that was going to coincide exactly  
3 with all of our reply briefing in the Second Circuit and the 44  
4 appeals that are pending.

5 The defendants are filing their briefs on April 20th.  
6 The structure of the briefing is, at this point, a little  
7 unclear to us. There is going to be a brief that is jointly  
8 filed on behalf of a large group, but they have reserved the  
9 right of every defendant to file a brief as well. In theory  
10 there could be as many as 45 briefs. I think it will be  
11 substantially fewer, but within the month after that we are  
12 going to be sort of besieged with appeal briefing, and we  
13 prefer to avoid a situation where that deprives from the  
14 opportunity to deal with the follow-up discovery and the motion  
15 practice.

16 I think what we had in mind was just a brief extension  
17 of the production period so that the productions would complete  
18 around the same time as the Second Circuit briefing which is  
19 early June.

20 THE COURT: On the defense side is there any objection  
21 to that?

22 (Pause)

23 Well, the silence is deafening.

24 MR. GOETZ: Frederick Goetz on behalf of WAMY  
25 International.

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1                   No objection on behalf of WAMY, your Honor.

2                   THE COURT: Rather than going through everybody that  
3 is on the phone, if I don't hear anything in the next few  
4 seconds, I will assume that is unobjectionable and I will so  
5 order that.

6                   (Pause)

7                   THE COURT: It is so ordered.

8                   MR. CARTER: Thank you, your Honor.

9                   THE COURT: On the defense side, is there anything --  
10 defendants indicated that they didn't much want to talk about  
11 the status of discovery in general, in any event, but if there  
12 is anything that anybody wants to share with the group, feel  
13 free.

14                   MR. GOETZ: Your Honor, Frederick Goetz for WAMY, if I  
15 might.

16                   THE COURT: Keep your voice up.

17                   MR. GOETZ: Certainly, your Honor.

18                   Unfortunately, Mr. Mohammedi is detained on another  
19 matter today, but he just returned recently from Saudi Arabia  
20 where he apprised the plaintiffs, I guess, of the number of  
21 documents --

22                   THE COURT: You need to keep your voice up again  
23 because the reporter is having difficulty, as am I.

24                   MR. GOETZ: I apologize, your Honor. The challenges  
25 of doing it the teleconference way -- I apologize.

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1                   Mr. Mohammedi estimates about 120,000 pages of  
2 documents he reviewed in his last -- or was there in his last  
3 trip to Saudi Arabia. I think he came back about a week or so  
4 ago.

5                   We believe we have supplied most of the documents to  
6 the plaintiffs. We have about another 15 pages of indexes yet  
7 to be produced. Similar to the plaintiffs' preparation of  
8 those indices which are in Arabic, will require some time for  
9 translation as well. So while we certainly join in the request  
10 for an extension of the time to complete the written discovery,  
11 Mr. Mohammedi and I discussed a period of 90 days, actually, if  
12 that would be appropriate with everybody.

13                  So, in other words, rather than April 30th, that would  
14 push that out to August 30th -- I'm sorry -- July 30th.

15                  THE COURT: I am time challenged, but August 30 didn't  
16 seem right.

17                  And your proposal was to put it out until when, Mr.  
18 Carter?

19                  MR. CARTER: We had suggested just essentially a  
20 month, to May 30th.

21                  THE COURT: I am going to say June 29th.

22                  Anything else before we turn to the letters rogatory?

23                  MR. McMAHON: Yes, your Honor.

24                  This is Mr. McMahon again for IRO and WL.

25                  I am assuming that you got my letter dated, I guess,

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1 yesterday?

2 THE COURT: I did.

3 Is there anything further to report about the time  
4 schedule for the substitution?

5 MR. McMAHON: No, your Honor.

6 I just wanted to opine that I believe we have complied  
7 with all the discovery requests. There were some documents in  
8 my office that I have shared with Mr. Carter in terms of some  
9 documents -- some documents have spindles. Other than those --  
10 and we just received a new box in, your Honor. And I made a  
11 specific inquiry which has not been responded yet about whether  
12 or not we are going to get some more documents.

13 If your Honor is not aware, we have been served with a  
14 third document production from the 9/11 plaintiff and I have  
15 corresponded with Mr. Carter about that.

16 Basically, your Honor, I think the law firm is  
17 waiting, obviously, to be retained and may ask me to remain in  
18 the case for some capacity, I don't know. But it is my  
19 understanding, your Honor, we are in pretty good shape with  
20 respect to document production. But I felt it might be better,  
21 though, if you heard representations from new counsel about  
22 where we are in document production rather than representations  
23 from me. So that was my only concern.

24 And as soon as the retainer gets signed, I guess I  
25 will be moving to withdraw and they will enter their

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1 appearance.

2 THE COURT: Unless you are sort of riding along with  
3 them for awhile as you indicated you might --

4 MR. McMAHON: That might happen.

5 THE COURT: -- failing that, you probably not only  
6 want me to substitute counsel but you also probably want me to  
7 get you -- and it requires a specific order -- off the ECF  
8 mailing list or you will continue to get notices for the rest  
9 of your life every time somebody hiccups in this case.

10 MR. McMAHON: Can you also get me paid, your Honor?

11 THE COURT: Would that I could.

12 MR. McMAHON: So I think I will report to your Honor  
13 as soon as I hear something from new counsel about the fact  
14 that they have actually been retained and we will certainly let  
15 Mr. Carter know as soon as that happens as well.

16 By the way, your Honor, I forgot to mention the new  
17 law firm is called Lewis Baach.

18 THE COURT: Where are they located?

19 MR. McMAHON: All over the globe, your Honor. They do  
20 a lot of work in the kingdom. They have an office address here  
21 in Washington, D.C. I think it is 601 F Street, but they are  
22 kind of all over the globe.

23 THE COURT: Thanks for letting us know that.

24 MR. HAEFELE: Just one quick note on that.

25 THE COURT: Yes.

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1                   MR. HAEFELE: If we could please have Mr. McMahon, the  
2 correspondence that he is having with Mr. Carter is nice,  
3 except it ends up resulting in Mr. Carter having to forward it  
4 to us, including the letter that went to the Court yesterday,  
5 he didn't circulate to all counsel. And I would appreciate the  
6 direction that he would continue -- or start including the rest  
7 of the lawyers in it.

8                   THE COURT: Yes. All correspondence, certainly with  
9 the Court, should be circulated to all counsel by the sender.  
10 Frankly, I didn't look at the fax so I didn't notice that that  
11 hadn't been done.

12                  MR. HAEFELE: Just to be fair to Mr. Kabat, he  
13 circulated it to me.

14                  THE COURT: OK. Until you bail out of the case, if  
15 you do, Mr. McMahon, you need to copy everybody on your  
16 communications with the Court.

17                  MR. McMAHON: Got you. Thank you, your Honor.

18                  THE COURT: Why don't we turn to the letters rogatory,  
19 which I reviewed both in draft and in proposed revised form.  
20 And I guess you can tell me what your concerns are, or Mr.  
21 Mohammedi's.

22                  MR. McMAHON: Your Honor, this is Mr. McMahon again.

23                  I have tickets to the opening game today in Washington  
24 D.C. and I was wondering, do I have to sit through this, I have  
25 no dog in the fight?

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1                   THE COURT: Enjoy the game.

2                   MR. GOETZ: I think that the issue is really quite  
3 narrow and is simply one of language rather than substance.

4                   THE COURT: Except for some of the language you  
5 proposed -- no, I guess the last letter said you are not or Mr.  
6 Mohammedi is not objecting to the time period, is that right?

7                   MR. GOETZ: That is correct, your Honor.

8                   THE COURT: In which case I have gone through the  
9 proposed changes, and maybe it would be quicker if I just tell  
10 you my tentative thinking with respect to the proposed wording  
11 changes and then if anybody wants to argue about any of them, I  
12 will certainly entertain that.

13                  Bear with me while I find the modifications that were  
14 suggested.

15                  The first two related to whether WAMY's counsel was  
16 going to be one of the attorneys to whom the executed request  
17 is to be returned. And based on the case management orders  
18 which provide that materials must be turned over by the  
19 requesting party to all other parties in the case, I think that  
20 just overly complicates questions, so I am inclined not to  
21 require those modifications.

22                  As to who the materials are to be delivered to, I was  
23 curious why you put Judge Daniels in there rather than me.

24                  That is addressed to the plaintiffs, obviously.

25                  MR. CARTER: Your Honor, I know that it has been the

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1 practice throughout the course of the litigation that the  
2 letters rogatory typically issue from Judge Daniels. I don't  
3 know if that is a requirement. I think we just followed the  
4 traditional practice.

5 THE COURT: I, frankly, had never really focused on  
6 that before. I don't much care. I was just curious.

7 Then there is the sentence, "All documents and  
8 materials deposited with the Court will be available to all  
9 parties."

10 Plaintiffs have any objection to that?

11 MR. CARTER: No, your Honor.

12 THE COURT: So that change will be made.

13 On page 5 where the defendants were crossing out time  
14 periods, it seems to me that is consistent with the plaintiffs'  
15 position.

16 MR. CARTER: Your Honor, the time periods on page 5  
17 were taken directly out of the letter that Canadian Review  
18 Agency sent to the WAMY office in Canada. We just copied their  
19 date periods.

20 THE COURT: I don't know that you need it. I'm not  
21 sure it matters one way or the other.

22 MR. CARTER: I don't think so.

23 THE COURT: So I am inclined to take it out if it  
24 really is surplusage. What you are looking for is the kitchen  
25 sink if they will give it to you in terms of the investigation.

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1                   In the next paragraph, as to the report's conclusion,  
2 the CRA investigative conclusions, number 2, the defendants  
3 propose to take out the notion that their shared office space  
4 and substitute contact information, it seems to me both are  
5 potentially accurate and that it should be "office space,  
6 contact information and bank accounts."

7                   MR. GOETZ: WAMY would have no objection to that, your  
8 Honor.

9                   THE COURT: In paragraph 3 or clause 4, I don't think  
10 it much matters other than for atmospherics to add "the CRA's  
11 views appears to," so I am inclined to put that in.

12                  I think it is accurate to say that the notice  
13 indicated that the Canadian government intended to revoke  
14 rather than was revoking, but I also think it is accurate to  
15 add a sentence saying that the letter provided that the  
16 revocation would take effect after 30 days, and 30 days has  
17 come and gone and, therefore, I assume, by operation of that  
18 clause, in fact, WAMY's designation as a Canadian tax-exempt  
19 registered charity has been revoked.

20                  And then the modifications that were proposed under 3,  
21 I gather the defendants are no longer seeking those insertions  
22 of narrow time periods.

23                  Is that correct?

24                  MR. GOETZ: That is correct, your Honor, but I would  
25 state that Mr. Mohammedi's letter of April 10, 2012, there is a

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1 copy to counsel, there is a slight additional modification or  
2 clarification that we are requesting as to the specific request  
3 of the letter rogatory.

4 THE COURT: Let me get through my rendition of this.

5 So all of those time period changes or narrowings drop  
6 out. And then the only other changes that I see in paragraphs  
7 9 and 10, you are proposing to take out the letters SDGT before  
8 the Netherlands International Fund, and I'm not sure I  
9 understand why that is or what difference it makes.

10 Mr. Carter, what is your view on that?

11 MR. CARTER: I think it is an accurate description of  
12 the entity.

13 THE COURT: What does this SDGT mean?

14 MR. CARTER: Specially designated global terrorist.

15 THE COURT: It seems to me it is not necessary so,  
16 again, we will take that out.

17 Shared office space, and probably you should add the  
18 change that conforms to the earlier one about contact  
19 information in paragraph 9.

20 And I think except to the extent that Mr. Goetz is  
21 drawing my attention to the April 10th letter again, that's all  
22 I had.

23 What else was it that you thought should be done, Mr.  
24 Goetz?

25 MR. GOETZ: Your Honor, if I could just respond to the

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1 Court's thoughts on the person to whom the executed requests  
2 are to be returned, the thinking there, your Honor, is  
3 basically consistent with the case management order from  
4 December 9, 2005. I guess it was our understanding that if  
5 both parties, the plaintiff and the defendant, or the defendant  
6 wanted records from a foreign government entity, that that  
7 would become a joint request and, therefore, both parties would  
8 be requesting parties.

9 Looking at the Court's language, "within 20 days of  
10 receipt of such notice, any other party interested in obtaining  
11 documents from the same nonparty foreign government or official  
12 should submit its proposed request to the initiating party and  
13 all parties together shall submit an agreed form of request to  
14 be sent to the foreign government or official."

15 So we certainly don't intend to make it any more  
16 difficult for the Canadian authorities but to the extent, I  
17 thought that the spirit of that would be that all parties would  
18 be requesting parties if they wanted documents from these  
19 foreign entities.

20 THE COURT: That is probably helpful, actually, to the  
21 plaintiffs.

22 Any objection to that?

23 MR. CARTER: Your Honor, the only concern we have is  
24 that in dealings with foreign governments, our experience has  
25 been that, to the extent you make it more difficult for them

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1 and create additional layers of communication that they have to  
2 go through, it becomes a much longer process and the results  
3 tend to be less productive. And so we were just trying to  
4 create a scenario under which there was at least a clean line  
5 of communication to allow the CRA to respond.

6 THE COURT: Perhaps we can tweak the language to  
7 accomplish that, such that the request is by the following  
8 attorneys for plaintiff and for WAMY -- Mr. Mohammedi is on  
9 what I will call the service list, although that is not fully  
10 accurate -- "I request that all copy documents and materials be  
11 delivered to the custody and control of" -- you were not  
12 planning to have them mail it to, in your version, four or five  
13 different addresses, right?

14 MR. CARTER: No, your Honor.

15 THE COURT: So I guess, are you the designee?

16 MR. CARTER: I suppose, yes, I am, your Honor.

17 THE COURT: So there, modify it to say that it will be  
18 delivered to you to be provided to the Court, and instead of  
19 "will be available" in the underlying language, why don't you  
20 change that to "shall be made available forthwith to all  
21 parties." I am adding a "shall" and a "forthwith."

22 Is that sufficient, Mr. Goetz.

23 MR. GOETZ: Yes, it is, your Honor. Thank you.

24 THE COURT: So we have dealt with the letters  
25 rogatory. We have dealt with the discovery schedule.

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1 MR. GOETZ: Your Honor, I apologize.

2 Fred Goetz with one last point about the  
3 interrogatory, getting back to Mr. Mohammedi, about that letter  
4 of April 10 --

5 THE COURT: Yes.

6 MR. GOETZ: This is a clarification as to, I guess,  
7 the entity that the documents in the CRA's possession pertains  
8 to it, and it is WAMY Canada. And at some point the letters  
9 rogatory that is made clear and at other points it is not,  
10 particularly, requests 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12. And  
11 the only change that we are proposing there is just a  
12 clarification that it is World Assembly of Muslim, Jews or  
13 WAMY-Canada.

14 THE COURT: Mr. Carter.

15 MR. CARTER: Your Honor, that is problematic from our  
16 perspective on a number of levels.

17 If you look at the actual audit, it is clear that the  
18 CRA looked at the activities not only of the Canadian branch  
19 office, but also of the Saudi entity and the UK, and it is  
20 unclear whether there may have been investigations of other  
21 offices that may not be fully reflected in the report.

22 THE COURT: I think that draws, Mr. Goetz, too fine a  
23 line because some of the conclusions of the report certainly  
24 relate to WAMY Saudi Arabia, and I think it would be confusing,  
25 at a minimum, to restrict each paragraph to WAMY Canada,

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1 because that might in some way be seen as limiting the scope of  
2 requests that, as I said a little while ago, are really  
3 intended to get, to the extent that the Canadians will provide  
4 it, the entire investigative file.

5 So that request is denied.

6 MR. GOETZ: Understood, your Honor.

7 That's all that I have.

8 THE COURT: Anything else from anyone for today?

9 Do we have another date scheduled?

10 MR. CARTER: We do, your Honor. Off the top of my  
11 head, I don't know it.

12 THE COURT: Apparently, I am not in the country the  
13 date that we have it scheduled for so I needed to move it.

14 Bear with me a second.

15 Off the record.

16 (Discussion off the record)

17 THE COURT: Do we need the session in or around May  
18 17th, given what I have done to the discovery schedule?

19 MR. CARTER: Your Honor, I think early June would  
20 work. I am hesitant to push it out too far because we do have,  
21 frankly, some concerns about the transition that is happening  
22 with counsel for the MWL and the IRO, and we may need to come  
23 back to discuss that and how it impacts on what we have been  
24 doing for the last several months.

25 MR. GOETZ: Frederick Goetz for WAMY.

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We anticipate having one issue related to these production of the documents from the SAR defendants.

THE COURT: How about June 6th at 2 p.m.? That is a Wednesday.

MR. CARTER: I think that works for us, your Honor.

THE COURT: If it doesn't, I could, at the moment, make it June 13th at 2 p.m. also.

So I will assume it is June 6 unless I hear from you folks otherwise.

MR. CARTER: That's fine, your Honor.

MR. GOETZ: Yes, your Honor.

THE COURT: Thank you all.

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